

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:17cr302
 .
vs. . Alexandria, Virginia
 . February 2, 2018
NIKOLAI BOSYK, . 10:30 a.m.
 .
Defendant. .
 .

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

NATHANIEL SMITH, III, AUSA
United States Attorney's Office
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Alexandria, VA 22314
and
LAUREN BRITSCH, ESQ.
U.S. Department of Justice
Criminal Division
Child Exploitation and Obscenity
Section
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Washington, D.C. 20530

FOR THE DEFENDANT:

MARK B. WILLIAMS, ESQ.
WILLIAM D. ASHWELL, ESQ.
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 (Defendant present.)

3 THE CLERK: Criminal Case 17-302, United States of
4 America v. Nikolai Bosyk. Would counsel please note their
5 appearances for the record.

6 MR. SMITH: Good morning, Your Honor. Nathaniel
7 Smith and Lauren Britsch for the United States.

8 MS. BRITSCH: Good morning.

9 THE COURT: Good morning.

10 MR. ASHWELL: Good morning, Your Honor. William
11 Ashwell and cocounsel, Mark Williams, here for the defendant,
12 Nikolai Bosyk.

13 MR. WILLIAMS: Good morning.

14 THE COURT: Good morning.

15 All right, what's before the Court today is the
16 defendant's motion to suppress, which has been extensively
17 briefed, and the Court has had a chance to not only read over
18 the briefs, but obviously, I've read the affidavit for the
19 search warrant.

20 I don't need to hear any further argument from
21 counsel. I'm just going to announce to you what my ruling is
22 in this case.

23 First of all, despite the defendant's argument and
24 despite the fact that there is some authority from one of our
25 Norfolk colleagues in the Reece case that a similar but not

1 exactly the same affidavit was insufficient to establish
2 probable cause, I disagree with that position, although I do
3 disagree with the defense that the government in its motion put
4 more evidence before the Court that was, that was in the
5 affidavit, and it would have been a stronger and better
6 affidavit if the background, the TOR discussion and how one
7 gets on to this type of bulletin board should have been in the
8 affidavit.

9 But the fact that not everything that could have been
10 in an affidavit was in it does not mean that there was not
11 sufficient probable cause.

12 What is clearly in the affidavit is that Bulletin
13 Board A is a dedicated bulletin board to advertising
14 distribution and production of child pornography and that it
15 therefore, already anybody who might be on that site, there
16 would be a reasonable belief that that person was interested in
17 accessing that kind of information.

18 Then there was the posting of that particular section
19 that was clearly advertising video clips of what would
20 absolutely be unequivocally child pornography, and the critical
21 fact that I think makes the difference between this affidavit
22 and the other one is that the same day that posting went up,
23 the URL that is linked -- or the IP address that is linked to a
24 computer in the defendant's home, not to the defendant
25 necessarily but to somebody in that home, attempts to or at

1 least shows an interest in that particular site.

2 In my view, that's enough for probable cause to
3 believe that there would be a computer in that residence that
4 would have child pornography on it.

5 Now, the other argument that is made in the
6 defendant's papers is that this is a staleness issue because
7 there is approximately a five-month time period between the
8 time of that contact with the URL and the obtaining of the
9 search warrant. Again, in these types of cases, that is, cases
10 involving child pornography, it's well established in the
11 Fourth Circuit under the *Davis* case that as much as a one-year
12 time period is not excessive, and it is true, the Court has had
13 itself great experience with child pornography cases. It's
14 very unusual to see people who, who do look at child
15 pornography not hold it for extensive periods of time. It's
16 not the kind of material that dissipates, like a drug that
17 could be flushed down the toilet, and so I believe that there
18 was enough probable cause and that the -- it was not stale.

19 However, even if there were a defect, and I don't
20 think there was, but even if there were a defect, under the
21 *Leon* good faith exception or doctrine, there is nothing in this
22 record that in my view would support a finding that the officer
23 who swore out the affidavit or that the magistrate judge were
24 not acting in complete good faith and that there was any
25 intentional misleading of the magistrate judge, and so *Leon* in

1 my view would save this.

2 Now, I understand that, as I said, that the Reece
3 court looked at it differently, but I disagree with that
4 reasoning, and so I am going to deny the motion to suppress.
5 So that's my reasoning for that, and I think that was the only
6 issue that we had on in this case.

7 If there are going to be any motions in limine or
8 other motions connected with this case, obviously, we take
9 those up well before the trial, so you need to make sure that
10 they get noticed for any resolution well ahead of that time,
11 all right?

12 All right, anything further on this case?

13 MR. SMITH: Nothing from the government, Your Honor.

14 THE COURT: How about from defense counsel?

15 MR. ASHWELL: Nothing from defense counsel. If the
16 Court would just note our exception to the Court's opinion?

17 THE COURT: And as I said, you wrote a good brief,
18 and you had authority for it. I just think that it's -- we
19 differ on this.

20 MR. ASHWELL: Thank you, Your Honor.

21 THE COURT: All right, you're all free to go.

22 MS. BRITSCH: Thank you, Your Honor.

23 (Which were all the proceedings
24 had at this time.)

25

CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of
the record of proceedings in the above-entitled matter.

/s/
Anneliese J. Thomson